

LAND—INDIANA CANAL.

[To accompany bill H. R. No. 79.]

MARCH 4, 1840.

Mr. SERGEANT, from the Committee on the Judiciary, made the following

REPORT:

*The Committee on the Judiciary, to whom was referred the resolution of the Legislature of the State of Indiana, on the subject of the Wabash and Erie canal land claim, report :*

That they have examined with attention the documents accompanying the President's message of the 20th December, 1838, which comprise all the requisite information upon the subject of the resolution.

As a copy of the message and documents accompanies this report, exhibiting in detail the questions which have arisen, and the views taken of them, the committee do not deem it necessary to exhibit them again by a detailed examination. They think it sufficient to state their conclusion, with only so much of the case as may be required to make it understood.

The act of the 2d March, 1827, (a copy of the first and second sections of which is hereto annexed,) is, in effect, a contract on the part of the United States with the State of Indiana for contributing to the opening of a canal from the navigable waters of the Wabash to Lake Erie. The contribution was to be made in land, and the quantity was to be "equal to one-half of five sections in width on each side of said canal, and reserving each alternate section to the United States, from one end thereof to the other." The quantity of land to be contributed was, therefore, to depend upon the length of the canal. At the time of the passage of the act, the canal had not been located, nor the termini fixed. Both were left to the State of Indiana, within the limits already stated—that is, the navigable waters of the Wabash at one end, and Lake Erie at the other. To the same extent, it was the right of the State of Indiana to determine the quantity of land to be contributed by the United States, as that was to depend upon the length of the canal; which, again, depended upon the location and the points of termination; and these were left to the State.

The canal, it appears, was located; the termini were understood to be fixed; and the selection of the land made accordingly, equal to one-half of five sections in width on each side of the canal. This land was duly granted to the State of Indiana and the State of Ohio—the last-named State claiming under Indiana, by virtue of an arrangement which need not be particularly set forth.

Afterwards, the State of Indiana concluded to change the western termination of the canal, and, instead of stopping at Tippecanoe, (as originally

decided,) to continue it down to Terre Haute; both being within the description of "navigable points" of the Wabash river.

For this extension, computed by the Commissioner of the Land Office to be ninety miles, the State of Indiana claims to be entitled to an additional quantity of land, equal to five sections in width on each side of the extended line.

Upon this claim several questions have arisen, and have been carefully examined and discussed, on the part of the United States, by the Commissioner of the Land Office. His final decision, that it was not competent for the Executive of the United States to make a new or second assignment of land to the State of Indiana, appears to the committee to have been unavoidable. The authority given by the act of 2d March, 1827, according to its terms, had been executed, and was exhausted. No power remained. The single thing to be done had been done, and the act looked no farther.

This, then, brings us to the question, What, under the circumstances, ought to be done by Congress, whose power is plenary, when the delegation of its authority, heretofore made, is admitted to be insufficient for satisfying the claim put forward by Indiana? The general answer is plain: Congress ought to examine the claim upon its own merits; and, if found to be just, supply the means of satisfying it.

We are thus brought to inquire into the general justice of the claim made by the State of Indiana. And here, the first remark which presents itself is, that a case has occurred which was not contemplated by the parties at the time of the passage of the act of March, 1827, namely: the necessity, or the high expediency, of changing the location, and especially of changing the western termination of the canal. The act seems to have assumed that the route first adopted would be the final one, and undergo no alteration. No provision, therefore, was made for such a case. And yet, how does it differ from what was provided for? It cannot be denied that, if the State of Indiana had, in the first instance, located the line to Terre Haute, (the point it is now extended to,) that whole location would have been within the act, for it would have been (as it now is) within the description of the "navigable points" of the Wabash river. The State would then have been entitled to the quantity of land for the whole length, being precisely what is now asked for. The only distinction between the two cases is thus reduced to a single fact, namely: that the State of Indiana, instead of adopting the more extended line in the first instance, has adopted it after a better acquaintance with the subject has manifested its superiority. This fact ought rather to operate in favor of her claim, than against it; if, indeed, it be not too unimportant to have any bearing at all upon the question.

But further, and taking a more liberal view of the matter. The object of the contract was that a canal should be made. Towards the expense of its construction, the United States agreed to contribute a certain proportion of land. The canal was, of course, intended by both parties to be a valuable and useful improvement, and as beneficial as possible. Instead of claiming any right to interfere in its location and construction, in order to make it what was desired the United States left these things to the State of Indiana, without reserve, and thus accepted the judgment of that State (no doubt upon good ground) as conclusive evidence that all would be done for the best. This concession applies equally to the new selection. No dispute can be entertained about its correctness. In the true spirit of the agreement, it must be assumed (as, doubtless, is the fact) that

it is the fit one, and is necessary to the usefulness and value of the canal ; that it is, in truth, the terminus which ought to have been selected at first. If so, this canal must be considered as *the* canal which was the original subject of agreement, and for which the parties agreed to contribute in the manner before stated. The State of Indiana is willing to take upon herself the obligation to pay her proportion of the increased expense. Upon what just ground can the United States withhold their proportion ? The single reason that this is not the first selection, is too feeble to afford a justification, when it is evidently the best selection.

Neither can it be said that the United States will contribute more than was originally contemplated. The point now fixed upon, at Terre Haute, is within the limits at first prescribed ; and all within those limits was certainly in the contemplation of the parties, from the beginning, as a measure of contribution.

The committee do not think it necessary to extend these remarks. They hope what has been said will be thought to warrant them in reporting the bill herewith presented.

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*Sections 1 and 2 of the act of 2d March, 1827, entitled "An act to grant a certain quantity of land to the State of Indiana, for the purpose of aiding the State in opening a canal to connect the waters of the Wabash with those of Lake Erie."*

"Sec. 1. That there be, and hereby is, granted to the State of Indiana, for the purpose of aiding the said State in opening a canal to unite at navigable points the waters of the Wabash river with those of Lake Erie, a quantity of land equal to one-half of five sections in width, on each side of said canal, and reserving each alternate section to the United States, from one end thereof to the other ; all the said lands shall be subject to the disposal of the Legislature of said State, for the purpose aforesaid, and no other : *Provided*, That the said canal, when completed, shall be and forever remain a public highway for the use of the Government of the United States, free from toll or other charge whatever, for any property of the United States, or persons in their service, passing through the same : *Provided*, That said canal shall be commenced within five years, and completed in twenty years ; or the State shall be bound to pay to the United States the amount of any lands previously sold, and that the title to purchase under the State shall be valid.

"Sec. 2. That so soon as the route of said canal shall be located and agreed on by the said State, it shall be the duty of the Governor thereof, or such person or persons as may have been or shall hereafter be authorized to superintend the construction of said canal, to examine and ascertain the particular lands to which the said State will be entitled under the provisions of this act, and report the same to the Secretary of the Treasury of the United States."

